TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 560.

THE UNITED STATES, APPELLANT,

vs.

FRANK Y. ANDERSON AND WILLIAM J. CAMERON, TRUSTEES, &C., AND THE ALABAMA STATE LAND COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 21, 1904.

(19211.)

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18127—04

1 In the Court of Claims.

FRANK Y. ANDERSON AND WILLIAM J. CAMERON, trustees of the lands of the railroad lately known as the Alabama and Chattanooga Railroad, who sue for the use and benefit of the Alabama State Land Company, and The Alabama State Land Company,
vs.
THE UNITED STATES. } No. 21315.

I. *Petition and amended petition.*

The claimants filed their original petition on the 4th day of May, 1899. Subsequently, to wit, on the 18th day of December, 1899, the claimants, by leave of court, in lieu of said original petition, filed their amended petition, which is as follows:

Amended petition, filed December 18, 1899.

To the Honorable the Court of Claims:

Your petitioners, the claimants herein, respectfully represent:

1. That petitioner, The Alabama State Land Company, is an incorporated company under the laws of the State of Alabama, with full
2 power and authority to acquire, hold, and dispose of the title to real property, and to sue and be sued.

That your petitioners, Frank Y. Anderson and William J. Cameron, are the trustees of the lands of the railroad lately known as the Alabama & Chattanooga Railroad, under the provisions of an act of the general assembly of Alabama, approved February 23, 1876, known as the "Debt settlement act" (acts Alabama, 1875–6, p. 130), and under a deed made pursuant to said act on February 8, 1877, by George S. Houston, governor of the State of Alabama, conveying the lands granted to said railroad company to John Swann and John A. Billups, trustees, in and upon certain trusts and uses therein mentioned; and are the successors of said Swann and Billups, trustees, deceased; and they join and sue in this action for the sole use and benefit of the Alabama State Land Company, the beneficial owner of the lands hereinafter particularly mentioned as having been trespassed upon and despoiled of iron ore and lime rock, for which the United States has been paid the sum of fifteen thousand dollars, which money is the subject-matter of this action, as hereinafter shown.

That they and their predecessors, Swann and Billups, as trustees, as aforesaid, held all the right, title, and interest in the said lands which was granted to the State of Alabama by the United States, in the manner and for the uses hereinafter stated, in trust, for the use and benefit of the beneficial owner thereof, the Alabama State Land Company, at the time the said trespass was committed, and until January 30, 1899, when they conveyed them to said Alabama State Land Company, the beneficial owner, as their duty as such trustees required them to do.

2. That the Congress of the United States, by an act approved June 3, 1856 (II Statutes, p. 17), made a grant of six alternate odd-numbered

sections of lands per mile, lying within limits of six sections in
3 width on each side of the railroad, to the State of Alabama to aid in the construction of a railroad, designated in section 6 of said act as "The Northeast and Southwestern Railroad, from near Gadsden to some point on the Alabama and Mississippi State line in the direction to the Mobile and Ohio Railroad, with a view to connect with said Mobile and Ohio Railroad;" and by a proviso to said section authorized the legislature of said State to designate the road to which the granted lands should be assigned.

It was provided by section 1 of said act that where the alternate odd-numbered granted sections, or parts of sections, of lands lying within the six-mile limits of the road had been sold by the United States, or the right of preemption had attached to the same at the time the line or route of the road was definitely fixed, other vacant and unappropriated odd-numbered sections, or parts of sections, of lands lying in the nearest tier of sections outside of the six-mile limits, and within fifteen miles of the line of said road, could be lawfully selected in lieu thereof by selecting agents appointed by the governor of said State, which selections should be approved by the Secretary of the Interior. (Vide sec. 1, 11 Stat., supra.)

By section 4 of said act it was provided that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of the road, might be sold (when the line of the road was definitely fixed), and when the governor of said State should certify to the Secretary of the Interior that twenty continuous miles of road had been completed, then another quantity of lands, not exceeding one hundred and twenty sections, and within like limits, could be sold, and so on until the whole road was completed; and the following express condition was annexed to the grant: "And if any of
4 said roads is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States." (Vide sec. 4, 11 Stat., supra.)

It was also provided by section 3 of said act: "And the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States."

It was further provided by section 5 of said act: "That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may, by law, direct; provided, that until such price is fixed by law, the Postmaster-General shall have the power to determine the same."

By joint resolution of the legislature of Alabama, approved January 30, 1858, the State accepted the grant on the same terms and conditions and restrictions imposed by the granting act, and granted the lands to the Northeast and Southwest Alabama Railroad, a body corporate existing under the laws of Alabama, "to be used and applied by said company upon the terms, conditions, and restrictions in said act of Congress contained." (Laws of Alabama, 1857–1858, p. 430.)

That a map of definite location of the line or route of said railroad was filed by said company in the Department of the Interior and approved by the Secretary thereof on or about October 11, 1858, whereby said line

or route become "definitely fixed," and the grant at once attached to the lands in the six mile or granted limits thereof, which were vacant on that date; and the vacant lands lying within the fifteen mile, or indemnity limits, were, at the same time, all withdrawn from sale and settlement, under the public land laws, by the Commissioner of the General Land Office, under the order of the Secretary of the Interior.

3. That the Northeast and Southwest Alabama Railroad was consolidated with the Wills Valley Railroad, mentioned in the 1st section of the act of Congress of June 3, 1856 (II Stat., p. 17), and reincorporated under the name of the Alabama and Chattanooga Railroad Company by acts of the legislature of Alabama approved October 6, 1868, and November 17, 1868. (Acts of Alabama, 1868, pp. 207, 345.)

The last-named railroad was completed, equipped, and in operation within the time prescribed by the act of Congress of June 3, 1856, aforesaid, as renewed by an act of Congress approved April 10, 1869 (16 Stat., p. 45), and become the beneficial owner of the granted lands aforesaid. Said railroad is now known as the Alabama Great Southern Railroad.

4. That said railroad was fully constructed within the time prescribed by law, and has always been, and is now, a public highway, free and open to the use of the United States for the transportation of the property and troops of the United States without toll or charge; and the mails of the United States have been and are now transported at the reduced price fixed by law for land-grant railroads, and every condition prescribed by Congress in the original grant, law, and contract has been fully performed by the State of Alabama, its grantees and assigns.

5. That the whole amount of odd-numbered sections of lands granted by Congress to aid in the construction of said Northeast and Southwest Alabama Railroad as aforesaid was, in round numbers, 660,000 acres; and the whole amount of odd-numbered sections and parts of sections found to be vacant and subject to the grant at the time the line of the road was definitely fixed, lying within the six mile or granted limits thereof, was found by the Secretary of the Interior to be, in round numbers, 141,000 acres, leaving a deficiency of lands to be supplied from the fifteen mile or indemnity limits of said road of 519,000 acres; and that the whole amount of vacant odd-numbered sections and parts of sections lying within said fifteen mile or indemnity limits, both approved and unapproved, was found by said Secretary to be less than 238,000 acres, from which to satisfy the losses of lands in the granted limits aforesaid, and making a deficiency of indemnity lands, and a deficiency in the grant itself, of more than 281,000 acres, which deficiency had existed from the time the line of the road was definitely fixed, and the lands were withdrawn in 1858, as aforesaid, and exists now.

That the adjustment of said land grant was made by the Commissioner of the General Land Office, under the direction and with the authority and approval of the Secretary of the Interior, on or about March 15, 1897, pursuant to an act of Congress for that purpose, approved March 3, 1887. (24 Stat., p. 556.)

6. That on December 30, 1887, a selecting agent, duly appointed by the governor of Alabama, selected the following-described tracts of land

lying within the indemnity limits of said railroad, in lieu and place of the tracts described, lying within the granted limits thereof, which had been disposed of by the United States, and thereby lost in place to the grantee and its assigns, to wit:

The west half of southeast quarter of section twenty-one, township fourteen south, range one west, selected in lieu of the north half of northeast quarter section thirty-five, township fourteen south, range one east, and the west half of northwest quarter of section twenty-seven, township fourteen south, range one west, selected in lieu of the south half of northeast quarter section thirty-five, township fourteen south, range one east, in Blount County, Alabama, which said tracts of land were selected, as aforesaid, in part satisfaction of said grant.

That said selecting agent, at the same time, tendered to the United States land officers at Huntsville, Alabama, all of the lawful fees
7 and charges due in the selection of said lands, but said officers wrongfully rejected said selection of lands so made as aforesaid, and an appeal was taken from their action to the Commissioner of the General Land Office, who, after many years of delay, reversed the decision of said officers, and instructed them to allow the selection of the lands to be made by said agent, and said selection was allowed by said officers on March 13, 1896, and the fees and charges of said officers were paid by said agent, and a list of said lands was approved by the Secretary of the Interior on April 10, 1896, and the legal title thereto, which had theretofore been held in trust by the United States for the use and benefit of the grantees of the State of Alabama and their assigns, passed from the United States to the State of Alabama, for the use and benefit of the beneficial owners thereof under the grant.

7. That between the years 1888 and 1894, and after said tracts of land had been selected by the selecting agent of the State of Alabama, as aforesaid, the Tennessee Coal, Iron and Railroad Company, the De Bardebelen Coal and Iron Company, and J. W. Worthington and Company went upon said tracts of land with force and arms, and without color of right, and mined and quarried iron ore and lime rock of great value therefrom, and removed and converted the same to their own use. That after the approval of the lands, as aforesaid, suits were brought against said parties by the United States, at the instance and request of the Alabama State Land Company, to recover damages therefor, in the circuit court of the United States for the northern district, southern division of Alabama; which suits were compromised and settled by the payment into the Treasury of the United States by the defendants, on or about November 28, 1898, of the sum of fifteen thousand dollars, and the payment of the costs of said suits. Petitioners consented to said compromise, but at the same time claimed, and gave notice to the
8 officers of the Government, that they would insist upon their right to this money after it had been paid by the trespassers into the Treasury of the United States.

8. That your petitioner, the Alabama State Land Company, was the beneficial owner of all the right, title, and interest in said tracts of land, which was granted to, conferred upon, and acquired by the State of Alabama, by said act of Congress of June 3, 1856, at the time of their selection by the selecting agent of the State, as aforesaid; and at the time the iron ore and lime rock was mined, quarried, and removed from them,

as aforesaid; and at the time they were approved to said State for the benefit of its grantees and assigns, as aforesaid; and at the time the suits were commenced by the United States against said trespassers, as aforesaid; and at the time the United States received the said sum of fifteen thousand dollars from said trespassers, as the price of said iron ore and lime rock, which had been unlawfully taken from the said lands as aforesaid, by grant, purchase, and mesne conveyances from the State of Alabama, its grantees and assigns, made before and after the said lands were selected by the selecting agent of the State, as aforesaid, and approved by the Secretary of the Interior, as aforesaid, and is now the owner of them.

9. That on March, 17, 1899, your petitioner, the Alabama State Land Company, presented its claim for said sum of fifteen thousand dollars to the Secretary or the Treasury, and the same was returned to petitioner's attorney on or about March 25, 1899, with a letter signed by H. A. Taylor, Assistant Secretary, stating, in substance, that he was advised by the Solicitor of the Treasury that the Secretary of the Treasury had no jurisdiction in the case.

Now, therefore, the premises considered, your petitioner claims, to wit:

a. That said act of Congress of June 3, 1856, was, in fact, a

9 contract, as well as a law, between the United States and the State of Alabama, its grantees and assigns, whereby they were entitled to a title from the United States for every acre of vacant and unappropriated odd-numbered section and part of section of lands lying within the fifteen mile or indemnity limits of said railroad, from the time when the line of said road was definitely fixed, including the tracts trespassed upon, as aforesaid, and to the iron ore and lime rock contained therein; and to more than 281,000 acres of lands in addition thereto; that because of the fact of the deficiency of lands required to satisfy said grant within the six mile or granted limits, and the fifteen mile or indemnity limits of the road, the lands trespassed upon, as aforesaid, were, in fact, appropriated to the satisfaction of said grant at the time the trespass was committed, and the United States then held the legal title to them as a mere trustee for the State of Alabama and its grantees and assigns, without any beneficial interest in the lands or in the iron ore and lime rock contained in and taken from them by the trespassers, as aforesaid, and continued to so hold said lands in naked trust until they were approved by the Secretary of the Interior to the State of Alabama on April 10, 1896.

That, as a matter of fact, the United States had no beneficial title, claim, or interest in or to said lands at the time when the suits were brought against said trespassers, and at the time when the said sum of fifteen thouand dollars was paid into the Treasury of the United States by said trespassers, and the United States then had no right of property or ownership in the iron ore and lime rock for which said money was paid, and your petitioners had title thereto. Therefore, your petitioners claim that they have a just and lawful right to recover the said sum of fifteen thousand dollars in this action from the United States, and your petitioners ask judgment for the same.

10 b. Your petitioners, on the facts stated, claim and ask for judgment against the United States, for the sum of fifteen thousand dollars, for money had and received by the United States on or

about November 28, 1898, for the use and benefit of your petitioner, the said Alabama State Land Company.

c. Petitioners aver that no other person except petitioner, the Alabama State Land Company, is interested in this claim, and that no assignment or transfer of said claim, or any part thereof, has been made, except as herein stated; that your petitioners are justly entitled to the said amount of fifteen thousand dollars from the United States, after allowing all just credits and offsets; that petitioners are citizens of the United States, and have not in any manner voluntarily aided, abetted, or given encouragement to rebellion against the United States, and have at all times borne true allegiance to the same; and that every person and corporation under and through whom petitioners became the beneficial owner of the said claim are citizens of the United States, and have at all times borne true allegiance to the same, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the United States, and that petitioners believe the facts stated in said petition to be true.

M. D. BRAINARD,
Attorney for Petitioners.

DISTRICT OF COLUMBIA, *ss:*

Before me, Arthur Browning, a notary public in and for the District of Columbia, personally appeared M. D. Brainard, who being by me first duly sworn, according to law, on oath deposeth and saith, that he is an attorney of this court and the attorney in fact for the petioners in this case, and that he has read the annexed petition, and that the facts stated therein are true to the best of his knowledge and belief.

M. D. BRAINARD.

Subscribed and sworn to before me, this 16th day of December, A. D. 1899.

[SEAL.] ARTHUR BROWNING,
Notary Public, District of Columbia.

11 II. *Traverse—Filed Nov. 9, 1903.*

In the Court of Claims of the United States, December term, A. D. 1903.

THE ALABAMA STATE LAND CO.
vs.
THE UNITED STATES. } No. 21315.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. BRADT,
Assistant Attorney-General.

12 III. *Findings of fact and conclusion of law filed by the court November 16, 1903.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT:

I. That the petitioner, the Alabama State Land Company, is a legally incorporated company under the laws of the State of Alabama.

II. That Frank Y. Anderson and William J. Cameron, who are joined as parties to this action, are naked trustees, without any ownership in the lands out of which this action springs, or in the money, which is the subject-matter of the action, and they sue for the sole use and benefit of the Alabama State Land Company and not for their own use and benefit. (Acts Alabama, February 23, 1876. Acts 1875–1876, p. 130.) Testimoney of witness Anderson. Deed from Governor George S. H. Houston, of Alabama, to John Swann and John A. Billups, trustees, dated Feburary 8, 1877.

III. That by act approved June 3, 1856, Congress made a grant of lands to the State of Alabama of six alternate odd-numbered sections per mile, lying within limits of six sections in width on each side of the railroad, to aid in the construction of a railroad designated in section 6 of said act as "The Northeast and Southwestern Railroad, from near Gadsden to some point on the Alabama and Mississippi State line, in the direction to the Mobile and Ohio Railroad, with a view to connect with said Mobile and Ohio Railroad," and by a proviso to said section 6 authorized the State to designate the railroad to which said lands should be assigned.

That section 6 of the act of Congress of June 3, 1856 (II Statutes, pp. 17, 18), in addition to the grant to aid in the construction of the Northeast and Southwestern Railroad, afterwards known as the Alabama and Chattanooga Railroad, made a grant of lands to the State of Alabama of like character to aid in the construction of several other railroads, amongst which was a grant to the railroad named in said act as "the Central Railroad, from Montgomery to some point on the Alabama and Tennessee State line in the direction to Nashville, Tennessee," and now known as the South and North Alabama Railroad. That the Northeast and Southwestern Railroad, now known as the Alabama and Chattanooga Railroad, was definitely located opposite the lands in question on November 29, 1858, and the South and North Alabama Railroad was

13 definitely located opposite thereto on May 30, 1866, and that both of said railroads were constructed within the time required by law, and that the tracts of land involved in this action are within the common indemnity limits of both of said railroads.

That the time for the construction and completion of said railroad was extended by an act of Congress approved April 10, 1869, for the period of three years from and after that date. (II Statutes at Large, p. 17; 16 ibid., p. 45.)

IV. That it was provided in section 1 of said act of Congress of June 3, 1856, that where the alternate odd-numbered sections, or parts of sections, of lands lying within the six mile, or granted, limits of the road,

had been sold by the United States, or the right of preemption had attached to the same at the time the line or route of the road was definitely fixed, other vacant and unappropriated odd-numbered sections, or parts of sections, of lands lying in the nearest tier of sections outside of the six-mile limits, and within fifteen miles of the line of said road, could be selected in lieu thereof, by selecting agents appointed by the governor of said State, which selections should be subject to approval by the Secretary of the Interior. (II Statutes at Large, p. 17.)

V. That by joint resolution of the legislature of Alabama, approved January 30, 1858, the State accepted this land grant on the terms and conditions imposed by the granting act of June 3, 1856, and granted the lands to the Northeast and Southwest Alabama Railroad, a body corporate under the laws of Alabama, "to be used and applied by said company upon the terms, conditions, and restrictions in said act of Congress contained." (Acts of Alabama, 1857–1858, p. 430.)

VI. That the Northeast and Southwest Alabama Railroad was consolidated with the Wills Valley Railroad, mentioned in section 1 of the act of Congress of June 3, 1856, and reincorporated under the name of the Alabama and Chattanooga Railroad Company by acts of the legislature of Alabama, approved October 6, 1868, and November 17, 1868. (Acts of Alabama, 1868, pp. 207, 345.)

VII. That the lands involved in this action were then located in Demopolis, Alabama, land district, and were withdrawn from sale and settlement by telegrams and letters addressed to the proper land officers by the Commissioner of the General Land Office on June 19, 20, and 21, 1856, and the said orders of withdrawal were modified by the Commissioner by his letters of June 26, 1856, so as to allow preemption settlements and selections to be made on the lands up to the time the lines or routes of said road was definitely fixed.

VIII. That the map of definite location of the Northeast and Southwest Alabama Railroad was accepted by the Commissioner of the General Land Office on December 1, 1858.

IX. That under the provisions of an act of the legislature at Alabama approved February 11, 1870, the State loaned to the Alabama and Chattanooga Railroad Company two millions of dollars of the State's bonds to aid in the construction of the railroad, and received in exchange therefor an equal amount of the first mortgage bonds of the railroad company, secured by first mortgage on all of its property, "and all the right, title, interest, and estate which said company now has, or may hereafter lawfully acquire, in or to said lands."

14 X. That the company having made default in the payment of the interest on the bonds, the State, through its officers, took charge of the property of the company and after some years of litigation a compromise and settlement was made with the bondholders, which was ratified and confirmed by an act of the legislature of Alabama, approved February 23, 1876, commonly known as the "debt settlement act;" and under section 19 of this act George S. H. Houston, governor of Alabama, conveyed by deed to John Swann and John A. Billups, the trustees who had been appointed under said act, on February 8, 1877, "all the right, title, and interest which this State has, or is entitled to, in the lands and property described in said deed of mortgage, last named, executed by

said railroad company; and all the right, title, estate, and interest acquired by said State in the lands and property mentioned and described in said mortgage at the purchase under the decree of the district court of the United States for the middle district of Alabama, in the matter of bankruptcy of the Alabama and Chattanooga Railroad Company." That this conveyance of the lands was made for the benefit of the bondholders and the State, which was to receive 10 per cent of the proceeds of the sale of the lands, and the trustees acquired no personal property rights in the land thereby.

XI. That upon the death of John Swann, the trustee on behalf of the bondholders, under the debt settlement act of February 23, 1876, Frank Y. Anderson was appointed his successor by an act of the legislature of Alabama, approved November 29, 1890; and upon the death of John A. Billups, the trustee on behalf of the State, William J. Cameron was appointed his successor by the governor of Alabama on March 29, 1895; said Anderson and Cameron are now the legal trustees of said lands under the act of the legislature of Alabama, approved February 23, 1876, commonly known as the debt settlement act.

XII. That the Alabama State Land Company was incorporated on November 11, 1886, by the bondholders of the Alabama and Chattanooga Railroad Company, who were the beneficial owners of all the lands granted by Congress to aid in the construction of said railroad under the act of the legislature of Alabama, approved February 23, 1876, commonly known as the debt settlement act; and said bondholders and incorporators are now and have been the beneficial owners of said granted lands since they were conveyed to Swann and Billups, trustees, by the governor of Alabama on February 8, 1877.

XIII. That all of the money claimed to be due from the bondholders to the State of Alabama in section 19 of the debt settlement act of February 23, 1876, and in the act of the legislature of Alabama of February 20, 1883, was paid and satisfied in full by John Swann, representing the bondholders, on September 29, 1883, and that condition being performed, the act of the said legislature of February 20, 1883, in execution of the power of disposal of the granted lands by the State, become operative and of full force and effect. Thereafter the bondholders and stockholders of the land company were the sole beneficiaries of the lands under the trust.

15 XIV. That on December 30, 1887, the selecting agent of the State of Alabama made application in due and legal form to select the lands which are involved in this action, at the United States land office at Huntsville, Alabama, and tendered the legal fees and charges payable on said selection, viz: The W. ½ of SE. ¼ of section 21, township 14 south, range 1 west, selected in lieu and place of the N. ½ of NE. ¼ of section 35, township 14 south, range 1 east, a tract of land lying in the six-mile or granted limits of the road which had been disposed of by the United States prior to the definite location of the road, and also the W. ½ of NW. ¼ of section 27, township 14 south, range 1 west, which was selected in lieu and place of the S. ½ of NE. ¼ of section 35, township 14 south, range 1 east; another tract of land which had been disposed by the United States prior to the definite location of the railroad; and this selection was erroneously and improperly rejected

by the local land officers, and an appeal from their action was taken to the Commissioner of the General Land Office by said selecting agent, and their action was set aside by the Commissioner and directions given to allow the selection on February 25, 1896, and the selection was allowed by the local land officers on March 13, 1896, and was approved by the Secretary of the Interior on April 10, 1896, in list numbered 25, in lieu of the very same lost lands specified on the original selection.

XV. That the governor of Alabama conveyed the said lands to Frank Y. Anderson and William J. Cameron, trustees under the debt settlement act of February 23, 1876, on April 18, 1896, by proper conveyance, and said Anderson and Cameron, trustees, conveyed them to the Alabama State Land Company by their deed dated January 30, 1899, and the title is now vested in said company. (Acts of Alabama, February 10, 1876, p. 154; and of February 20, 1883, p. —.)

XVI. That after the selection of the lands and between the years 1888 and 1894 the Tennessee Coal, Iron and Railroad Company, the De Bardeleben Coal and Iron Company, and J. W. Worthington and Company went upon said lands with force and arms, and without color of right or title, and mined, shipped and removed from the W. ½ of NW. ¼ of section 27, township 14 south, range 1 west, a large quantity of iron ore of great value, which they converted to their own use; and said parties also went upon the W. ½ of SE. ¼ of section 21, township 14 south, range 1 west, and quarried and removed and converted to their own use a large quantity of lime rock of great value.

XVII. That the Acting Attorney-General of the United States by letter addressed to C. C. Harvey, vice-president of the Alabama State Land Company, on August 22, 1896, authorized the trustees of the lands, Anderson and Cameron, to bring suit against said trespassers in the name of the United States for the damages committed to said lands by them, but this permission was subsequently recalled and suits in the name of the United States were instituted against said parties by the United States attorney in the circuit court of the United States for the northern district, southern division, of Alabama, on February 8, 1897, and damages exceeding the sum of $260,000 were claimed therein by the United States and these suits were settled by compromise and were consolidated, and a judgment was entered by the court on November
16 25, 1898, in which the damages were remitted, it being admitted by the United States Attorney, in open court, that the defendants had paid into the Treasury of the United States the sum of $15,000, in full settlement of all demands under said compromise.

XVIII. That the claimants herein consented to the compromise with the depredators upon the payment of the sum of $15,000 into the Treasury of the United States, but claimed the said money, and notified the Attorney-General that they would insist on the money being paid over to the trustees for the benefit of the Alabama State Land Company.

XIX. That the official adjustment of this land grant made by the Land Department shows that there was a deficiency of lands in the six mile or granted limits of the railroad necessary to satisfy the grant of 523,244.87 acres and that 237,584.05 acres of this deficiency was supplied from the fifteen mile or indemnity limits of the grant, and that there is now a deficiency of vacant lands necessary to satisfy the grant in full of

285,660.82 acres, and this deficiency has existed since the grant become effective by the definite location of the line or route of the said railroad.

XX. That the reply of the Acting Postmaster-General, dated August 12, 1899, shows that this railroad has been treated as a land-grant railroad in the matter of the pay for transporting the mails of the United States, under the provisions of section 5 of the granting act of June 3, 1856, and that regular deductions have been made from the mail pay allowed to the road since July 1, 1876, under various acts of Congress.

CONCLUSION OF LAW.

The court decides as a conclusion of law, upon the foregoing findings of fact, that the claimant is entitled to a judgment against the United States for $15,000.00.

BY THE COURT.

The court filed no opinion in this case.

17 IV. *Judgment of the Court.*

At a Court of Claims held in the city of Washington on the 16th day November, 1903, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimants, and order, adjudge, and decree that the said Frank Y. Anderson and William J. Cameron, trustees of the lands of the railroad lately known as the Alabama and Chattanooga Railroad, who sue for the use and benefit of the Alabama State Land Company, and the Alabama State Land Company do have and recover of and from the United States the sum of fifteen thousand dollars ($15,000).

BY THE COURT.

18 V. *Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause, on the 16th day of November, 1903, in favor of the claimants, the defendants, by their Attorney-General, on the 30th day of December, 1903, make application for and give notice of an appeal to the Supreme Court of the United States.

LOUIS A. PRADT,
Assistant Attorney-General.

Filed December 30, 1903.

JANUARY 5, 1904.

Ordered, that the appeal be allowed as prayed for.

BY THE COURT.

19 Court of Claims.

FRANK Y. ANDERSON AND WILLIAM J. CAMERON, trustees of the lands of the railroad lately known as the Alabama and Chat'anooga Railroad, who sue for the use and benefit of the Alabama State Land Company, and the Alabama State Land Company,

v.

THE UNITED STATES.

No. 21315.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 15th day of January, 1904.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover): File No. 19211, Court of Claims. Term No. 560. The United States, appellant, vs. Frank Y. Anderson & William J. Cameron, trustees of the lands of the railroad lately known as the Alabama and Chattanooga Railroad, who sue for the use and benefit of the Alabama State Land Company, and the Alabama State Land Co. Filed January 21st, 1904. File No. 19211.

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